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GAUTENG***



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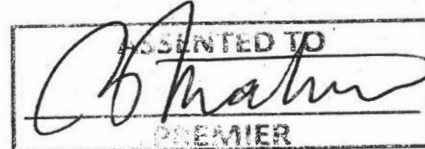
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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

NOTICE 1142 OF 2019

GAUTENG PROVINCIAL LEGISLATURE

GAUTENG TRANSPORT AUTHORITY ACT



CERTIFIED CORRECT AS PASSED BY
THE GAUTENG PROVINCIAL LEGISLATURE

SIGNED [Signature]
SPEAKER

DATE 29/03/2019

ENGLISH TEXT SIGNED BY THE PREMIER

ASSENTED TO ON: 30/04/2019

No 2, 2019

ACT

To provide for the establishment of the Gauteng Transport Authority and, for that purpose, to provide for matters connected therewith or incidental thereto.

PREAMBLE

WHEREAS the Constitution of the Republic of South Africa, 1996 (the “Constitution”), declares that the Republic of South Africa is one sovereign democratic state with a three-tier governmental system constituted at national, provincial and local and operating co-operatively with one another in mutual trust and good faith by—

- (a) fostering friendly relations;
- (b) assisting and supporting one another;
- (c) informing one another of, and consulting one another on, matters of common interest;
- (d) co-ordinating their actions and legislation with one another;
- (e) adhering to agreed procedures; and
- (f) avoiding legal proceedings against one another;

AND WHEREAS the Constitution in section 151(3) read with section 156(1), vests in a municipality the executive authority in respect of, and the right to administer or govern, on its own initiative, the local government affairs or matters of its community listed in Part B of Schedule 4 and Part B of Schedule 5, subject to national and provincial legislation, as provided for in the Constitution;

RECOGNISING that the Constitution in section 155(6), enjoins the provincial government, by legislative and other measures, to—

- (a) provide for monitoring and support of local government in the province; and
- (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs;

AND RECOGNISING FURTHER that the Constitution in section 155(7), vests legislative and executive authority on the provincial government to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1) read with section 151(3);

ACKNOWLEDGING that the National Land Transport Act, 2009 (Act No. 5 of 2009), prescribes national principles, requirements, guidelines, frameworks and national norms and standards with respect to the national land transport system that must be applied uniformly in the provinces and other matters contemplated in section 146(2) of the Constitution;

AND ACKNOWLEDGING FURTHER that the National Land Transport Act, 2009, in section 11(b)(iii) mandates the provincial government with the responsibility for co-ordination between municipalities with a view to ensuring the effective and efficient execution of land transport in the province and for promoting provincial legislation and the objects of that Act,

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of Gauteng as follows:

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CHAPTER 1

DEFINITIONS AND OBJECTS OF ACT

Part I

Definitions

Definitions 10

1. In this Act, unless the context indicates otherwise—

- “**ACSA**” means the Airports Company of South Africa Limited established by or under section 2 of the Airports Company Act, 1993 (Act No. 44 of 1993);
- “**Authority**” means the Gauteng Transport Authority established by or under section 3; 15
- “**chief executive officer**” means a person appointed under section 31;
- “**company**” has the meaning ascribed to that term by or under the Companies Act, 2008 (Act No. 71 of 2008);
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Department**” means the Department responsible for roads and transport in the Province; 20
- “**Executive Council**” means the Executive Council of the Province of Gauteng contemplated in section 132 of the Constitution;
- “**Gautrain Management Agency**” means the Gautrain Management Agency established by or under section 2 of the Gautrain Management Agency Act, 2006 (Act No. 5 of 2006); 25
- “**Minister**” means the Cabinet Member responsible for transport in the Republic;
- “**National Land Transport Act, 2009**” means the National Land Transport Act, 2009 (Act No. 5 of 2009);
- “**Parliament**” means the Parliament of the Republic of South Africa; 30
- “**PRASA**” means the Passenger Rail Agency of South Africa established by or under section 22 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);
- “**prescribe**” means prescribe by regulation;
- “**Province**” means the Province of Gauteng referred to in section 103(1)(c) of the Constitution; 35
- “**Provincial Legislature**” has the meaning ascribed to that term by or under section 105 read with sections 108 and 109 of the Constitution;
- “**Public Finance Management Act, 1999**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 40
- “**relevant Municipalities**” means all the Municipalities falling within the Province; established under section 12 of Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “**regulation**” means a regulation made by or under section 49;
- “**Republic**” means the Republic of South Africa referred to in section 1 of the Constitution; 45
- “**responsible Member**” means the Member of the Executive Council responsible for roads and transport in the Province;
- “**SALGA**” means the organised local government association in the Province contemplated in section 163 of the Constitution and established in terms of the Organised Local Government Act, 1997 (Act No. 52 of 1997); 50
- “**SANRAL**” means the South African National Roads Agency Limited established by or under section 2 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998); and
- “**Spatial Planning and Land Use Management Act, 2013**” means Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013); 55
- “**this Act**” includes any regulation made in terms of this Act.

Part II**Objects of this Act****Objects of this Act**

2. The objects of this Act are to—
- (a) establish and empower the Gauteng Transport Authority in order to— 5
 - (a) give effect to the Constitution and national transport policy and legislation within the Province; and
 - (b) consolidate certain transport functions of organs of State in the Province;
 - (b) integrate transport systems in the Province; 10
 - (c) foster co-operation and co-ordination between public transport authorities and operators in the Province;
 - (d) improve and optimise the planning and implementation of public transport services in the Province; and
 - (e) facilitate and rationalise the funding of public transport activities and initiatives in the Province. 15

CHAPTER 2**GAUTENG TRANSPORT AUTHORITY****Establishment of Gauteng Transport Authority**

3. (1) The Gauteng Transport Authority is hereby established as a juristic person. 20
 (2) The Authority is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name.
 (3) The Public Finance Management Act, 1999, applies to the Authority.

Objectives of Authority

4. (1) The objectives of the Authority are to— 25
- (a) develop an integrated transport system which contributes to environmental sustainability and social cohesion and promotes economic progress in the Province;
 - (b) provide a well-functioning, effective and modern, integrated and safe public transport system for all users in the Province; 30
 - (c) integrate the development of transport infrastructure and services in the Province;
 - (d) improve access to the transport system, including public passenger transport services, by all persons and, in particular, persons with disabilities;
 - (e) promote increased use of the public transport system; 35
 - (f) promote increased use of cycling and walking as means of transport; and
 - (g) promote value for money.
- (2) In the exercise of its powers and performance of its functions in terms of this Act, the Authority must seek to achieve the objectives referred to under subsection (1).

Functions of Authority

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5. (1) The functions of the Authority are to—
- (a) undertake strategic transport and integrated planning for transport in the Province;
 - (b) promote the development of an integrated and accessible public transport network in the Province; 45
 - (c) regulate public transport fares in the Province; and
 - (d) secure the—
 - (i) provision of public passenger transport services;
 - (ii) provision of public transport infrastructure;
 - (iii) provision of an integrated ticketing and information system for public transport; 50
 - (iv) effective management of traffic;
 - (v) effective management of transport demand;

- (vi) development and implementation of a single public transport insignia;
- (vii) collection of statistical data and information on transport;
- (viii) conduct of research on transport; and
- (ix) fostering of good relations and co-operation with and between various organs of state.

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(2) The Authority may do all such things that may arise out of or are consequential on or are necessary or expedient for the performance of its functions or are ancillary thereto.

(3) The responsible Member may, with the consent of the Board, by notice in the Provincial Gazette confer on the Authority such additional functions in relation to transport as may be appropriate to achieve the objects of this Act and the objectives of the Authority.

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Powers of Authority

6. The powers of the Authority are to—

- (a) enter into contracts and perform any other legal acts;
- (b) purchase, hire or otherwise acquire and hold, sell, exchange, let or otherwise deal with property, whether immovable or movable, for the purposes of this Act; and
- (c) generally, do anything or perform any other act that may be necessary for, or incidental to, the carrying out of its functions, or attainment of its objectives under this Act or achievement of the objects of this Act.

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CHAPTER 3

PLANNING MATTERS

Part I

Strategic Transport Plan

25

Strategic transport plan

7. (1) The Authority must develop a strategic transport plan in accordance with this section.

(2) The Authority must ensure that the first strategic transport plan is published no later than six months following the review of the Provincial Land Transport Framework in accordance with section 35 of the National Land Transport Act, 2009.

30

(3) The object of the strategic transport plan is to provide a long-term strategic planning framework for the integrated development of transport infrastructure and services in the Province.

(4) A strategic transport plan must consider the future development of the transport system in the Province for a period of no less than 5 years and no more than 15 years.

35

(5) When preparing a strategic transport plan, the Authority must have regard to—

- (a) the National Land Transport Strategic Framework contemplated in section 34 of the National Land Transport Act, 2009;
- (b) the Provincial Land Transport Framework contemplated in section 35 of the National Land Transport Act, 2009; and
- (c) the Integrated Transport Plans of the relevant municipalities contemplated in section 36 of the National Land Transport Act, 2009;
- (d) demographic, economic, social, travel and transport trends in the Province;
- (e) existing, planned and projected land use developments;
- (f) trends and requirements of persons travelling from outside the Province into the Province, and vice versa, and the demand for such travel;
- (g) any proposals received from the public transport authorities and operators; and
- (h) such other matters as may be prescribed by the responsible Member or as the Authority considers appropriate.

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(6) The Authority must ensure that the strategic transport plan is consistent with relevant regional spatial development frameworks prepared in accordance with Part D of Chapter 4 of the Spatial Planning and Land Use Management Act, 2013.

(7) A strategic transport plan must be prepared in such a form and manner as may be prescribed by the responsible Member.

55

(8) The Authority must—

- (a) in the course of preparing a strategic transport plan; and
- (b) after publishing a preliminary draft of the strategic transport plan, consult with, invite and consider the views of—
 - (a) Members of the Executive Council responsible for development planning, environment, heritage and local government matters in the Province; 5
 - (b) relevant municipalities;
 - (c) Gautrain Management Agency;
 - (d) PRASA; 10
 - (e) ACSA;
 - (f) SANRAL;
 - (g) SALGA;
 - (h) public transport operators;
 - (i) transport users; and 15
 - (j) other interested parties,

in the Province.

(9) The Authority must, after completing the consultation required in subsection (8), submit a draft of its strategic transport plan to the responsible Member for his or her approval. 20

(10) When submitting a draft of its strategic transport plan to the responsible Member under subsection (9), the Authority must send a copy of that draft to the relevant municipalities in the Province and those municipalities must, within a period of 30 days of their receipt of the draft, issue a notice to the Authority, the responsible Member and the Member of the Executive Council responsible for local government in the Province stating whether, in their view, the draft strategic transport plan is consistent or not with— 25

- (a) the National Land Transport Strategic Framework;
- (b) the Provincial Land Transport Framework; or
- (c) their respective Integrated Transport Plans, 30

and, in such case, what amendments to the draft strategic transport plan they consider necessary to achieve such consistency.

(11) Where a notice received by the responsible Member from the relevant municipalities in the Province under subsection (10) contains a statement of the type referred to in subsection (10)(c), the responsible Member may, after consulting with the Member of Executive Council responsible for local government in the Province, take any of the actions specified in subsection (12) and, where he or she does not accept the advice of the relevant municipalities given under subsection (10), he or she must inform the relevant municipalities in writing of the reasons for such decision. 35

(12) Following the expiry of 30 days referred to in subsection (10), the responsible Member may, having considered any notice or report received under subsection (10) or (11), in relation to a draft strategic transport plan submitted to him or her— 40

- (a) approve the draft;
- (b) approve it with modifications;
- (c) instruct that it be resubmitted to him or her in a modified form for approval; 45
- or
- (d) refuse to approve it.

(13) The responsible Member must, as soon as practicable after he or she has approved a strategic transport plan, with or without modifications, under subsection (12), cause a copy of it to be tabled in the Provincial Legislature. 50

(14) As soon as practicable after the responsible Member has notified the Authority that he or she has approved a strategic transport plan, the Authority must publish an executive summary of it in the Provincial *Gazette* and take all reasonable practical steps to implement it.

(15) Where the Authority has made a strategic transport plan, it must no later than five years after the making of the plan and no less than once in every period of five years thereafter, review such plan and when so reviewing, it may revoke the plan and make a new plan. 55

(16) Where the Authority makes a new strategic transport plan, it must do so in accordance with this section and the new plan supersedes any previous plan. 60

Part II

Integrated Implementation Plan

Integrated implementation plan

8. (1) As soon as practicable after the approval of a strategic transport plan by the responsible Member, the Authority must develop an integrated implementation plan for the ensuing five-year period in accordance with this section. 5

(2) An integrated implementation plan must comprise—

- (a) the key objectives and outputs to be pursued by the Authority over the period of the plan;
- (b) actions to be taken by the Authority to ensure the effective integration of public transport infrastructure over the period of the plan; 10
- (c) an integrated service plan, identifying the key objectives and outputs to be pursued by the Authority in relation to the procurement of public passenger transport services over the period of the plan;
- (d) the actions to be taken by the Authority to ensure the effective integration of public passenger transport services over the period of the plan; 15
- (e) an infrastructure investment programme; and
- (f) such other matters as the Authority considers appropriate or as may be prescribed by the responsible Member.

(3) An integrated implementation plan must be prepared in such a form and manner as may be prescribed by the responsible Member and have regard to— 20

- (a) any proposals received from public transport authorities and operators; and
- (b) the need to ensure the most beneficial, effective and efficient use of resources.

(4) The responsible Member, in consultation with the Member of the Executive Council responsible for finance, must provide the Authority with written guidance on multi-annual funding arrangements and the Authority must have regard to such guidance in preparing an integrated implementation plan. 25

(5) The Authority must, in the course of preparing an integrated implementation plan, consult, invite and consider the views of—

- (a) the responsible Member; 30
- (b) relevant municipalities;
- (c) Gautrain Management Agency;
- (d) PRASA;
- (e) ACSA;
- (f) SANRAL; 35
- (g) SALGA;
- (h) public transport operators;
- (i) transport users; and
- (j) other interested parties in the Province.

(6) The Authority must submit a draft of its integrated implementation plan to the responsible Member for his or her approval. 40

(7) The responsible Member may, in relation to a draft integrated implementation plan submitted to him or her—

- (a) approve the draft;
- (b) approve it with modifications; 45
- (c) instruct that it be resubmitted to him or her in a modified form for approval; or
- (d) refuse to approve it.

(8) The responsible Member must as soon as practicable after he or she has approved an integrated implementation plan, with or without modifications, under subsection (7), cause a copy of it to be tabled in the Provincial Legislature. 50

(9) As soon as practicable after the responsible Member has notified the Authority that he or she has approved an integrated implementation plan, the Authority must publish an executive summary of it in the Provincial Gazette and take all reasonable practical steps to implement it. 55

CHAPTER 4 GOVERNANCE OF AUTHORITY

Part I Board of Authority

Board of Authority 5

9. (1) The Authority is governed and controlled by a Board contemplated in section 11, in accordance with this Act.

(2) The Authority acts through the Board and all acts of the Board are regarded as the acts of the Authority.

(3) The Board must— 10

- (a) function without any political or commercial interference;
- (b) be impartial in the performance of its functions; and
- (c) ensure that in taking decisions, it complies with all legal requirements for just administrative action.

Composition of Board 15

10. (1) The Board consists of a chairperson and no more than twelve other members who must perform the functions and exercise the powers of the Authority in accordance with this Act.

(2) The Board is constituted as follows, having regard to the demographics of the Republic: 20

- (a) the chief executive officer of the Authority as an *ex officio* member;
- (b) three members nominated by the metropolitan municipalities in the Province;
- (c) two members nominated by the district municipalities in the Province;
- (d) one member from the Department nominated by the responsible Member; and
- (e) six ordinary members appointed by virtue of their collective expertise in any combination of financial and risk management, transport planning, transport engineering, economic development and environmental matters, legal and compliance, or human resources. 25

(3) The chairperson and the members of the Authority are appointed by the Executive Council, after recommendations made by the responsible Member, and after consultation with the relevant Municipalities. 30

(4) The chief executive officer does not have any voting rights.

(5) Members of the Board referred to in subsection 2(a), (b), (c) and (d) shall, by virtue of them being government representatives, not be entitled to any remuneration but will be entitled to be reimbursed for out-of-pocket expenses. 35

Appointment of members of Board

11. (1) Before appointing a member of the Board contemplated in section 10(2), the responsible Member must—

- (a) invite the metropolitan municipalities to each provide the responsible Member with a number of nominees as specified by the responsible Member, as contemplated in section 10(2)(b); 40
- (b) invite the district municipalities to each provide the responsible Member with a number of nominees as specified by the responsible Member, as contemplated in section 10(2)(c);
- (c) invite, through the media and by notice in the Provincial *Gazette*, nominations from the public of suitable candidates eligible for appointment as members of the Board for consideration and appointment by the Executive Council; 45
- (d) (i) in consultation with relevant Municipalities, compile a short list of names of suitable candidates eligible for appointment, including their particulars reflecting their qualifications, knowledge and experience as well as the demographics of the Republic; and 50
- (ii) submit and recommend to the Executive Council suitable persons from the short list for appointment.

(2) The responsible Member must issue appointment letters to members of the Board contemplated in section 10(2). 55

Disqualification for appointment as member

12. (1) A person contemplated in section 10(2) may not be appointed as a member of the Board if that person—

- (a) is not a citizen or permanent resident of the Republic; 5
- (b) is not permanently residing in the Province;
- (c) is a member of Parliament, a provincial legislature, a municipal council or a house of traditional leaders established in terms of an Act of Parliament or provincial legislation;
- (d) is an unrehabilitated insolvent;
- (e) is of unsound mind, as declared by a competent court; 10
- (f) has at any time been convicted of an offence involving dishonesty;
- (g) has at any time been removed from an office of trust on account of misconduct;
- (h) has previously been removed from the Board for a breach of any provisions of this Act; 15
- (i) has not obtained a required level of security clearance by a State Security Agency as may be determined by the Executive Council; or
- (j) is not a fit and proper person to hold office as a member of the Board.

(2) A member must vacate office if that member becomes subject to a disqualification contemplated in subsection (1). 20

Tenure of office of members

13. A member of the Board appointed in accordance with section 10(2), including the chairperson—

- (a) is appointed for a period not exceeding three years;
- (b) is eligible for re-appointment at the expiry of his or her term of office: 25
Provided that he or she may not serve for more than two terms; and
- (c) serves on a part-time basis.

Termination of membership of Board

14. (1) The responsible Member may, after consultation with the relevant Municipalities, recommend to the Executive Council to terminate the appointment of a 30 member—

- (a) for misconduct, incapacity or incompetence;
 - (b) for failing to comply with section 12 or section 22;
 - (c) if the member fails to attend three consecutive meetings of the Board without a valid explanation; or 35
 - (d) on good cause shown.
- (2) In addition to subsection (1), membership of the Board terminates if a member—
- (a) resigns; or
 - (b) dies.

(3) If the performance of the Board has been unsatisfactory or ineffective, the responsible Member may, after giving the Board an opportunity to be heard and after consultation with the relevant Municipalities, submit a request for the dissolution of the Board to the Executive Council for consideration. 40

Filling of vacancies

15. (1) Where a vacancy in the Board occurs as contemplated in section 14, the 45 procedure contemplated in section 11(1) applies.

(2) Any member appointed under subsection (1) holds office for the rest of the period of the predecessor's term of office and, on the expiry of that term of office, is eligible for re-appointment, subject to section 13.

Duties and responsibilities of Board 50

16. The Board—

- (a) must take steps to achieve the objectives of the Authority contemplated in section 4 and to ensure the proper performance of the functions and the proper exercise of the powers of the Authority;
- (b) must oversee and exercise general control over the activities of the persons 55

- appointed by it to perform the functions and to exercise the powers of the Authority; and
- (c) may by notice in the Provincial Gazette make guidelines and rules, subject to this Act, regarding—
- (i) the good management of the affairs of the Authority and the effective execution of its functions; and
 - (ii) any matter necessary or expedient for the proper performance of the functions and the exercise of the powers of the Authority.

Chairperson of Board

17. (1) Where the chairperson of the Board ceases during his or her term of office as the chairperson to be a member of the Board, he or she also then ceases to be chairperson of the Board.

(2) Where the chairperson of the Board is unavailable to perform his or her duties, or if he or she is unable to do so, the responsible Member must appoint another member contemplated in section 10(2) to be an acting chairperson and to assume the duties of the chairperson, in the absence of the chairperson: Provided that a member may not act for a period exceeding 12 months.

Duties and responsibilities of chairperson

18. The chairperson—

- (a) may, subject to ratification by the Board, exercise any power of the Board or fulfil any of its functions;
- (b) must prepare the agenda of meetings of the Board;
- (c) must sign the minutes of meetings of the Board;
- (d) must provide strategic direction to members and the Board;
- (e) may attend meetings of the senior management of the staff of the Authority; and
- (f) must establish and maintain liaison with the responsible Member and the Head of the Department.

Meetings and procedures of Board

19. (1) The Board must ordinarily meet as often as may be necessary for the discharge of its functions and at such times and places as the chairperson may determine, but not less than four times in any calendar year.

(2) The quorum for a meeting of the Board is a simple majority of the members of the Board.

(3) At the meeting of the Board—

- (a) the chairperson of the Board presides over it;
- (b) each member of the Board present and eligible to vote has one vote;
- (c) every question is determined by a majority of votes of the members present; and
- (d) in the case of an equal division of votes, the chairperson or another member presiding at the meeting has a casting vote.

(4) The Board may act notwithstanding one or more vacancies in the Board.

(5) Except as otherwise provided by this Act, the Board may regulate its own procedure and business.

Committees of Board

20. (1) The Board—

- (a) may establish committees to assist it in the discharge of its functions;
- (b) must establish—
 - (i) an audit and risk committee;
 - (ii) a social and ethics committee; and
 - (iii) any other committee, as required, in terms of the Public Finance Management Act, 1999, and any other applicable legislation.

(2) A committee established in terms of subsection (1)—

- (a) consists of at least three members appointed by the Board; and
- (b) must be chaired by a member appointed by the Board, who may not be the

chief executive officer.

(3) The Board must determine—

- (a) the role and responsibilities;
- (b) the procedures for the meetings; and
- (c) the frequency of the meetings,

of a committee established under this section.

5

Engagement of consultants and advisers

21. (1) The Board may engage such consultants or advisers, as it may consider necessary to assist it in the discharge of its functions.

(2) Any fees due to a consultant or adviser engaged under this section form part of the expenses of the Authority.

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Disclosure of interest by members of Board

22. (1) A member of the Board who has—

- (a) any interest in any body or concern with which the Authority has entered into a contract or proposes to enter into a contract; or
- (b) any interest in any contract which the Authority has entered into or proposed to enter into, must disclose to the Board the fact of such interest and the nature thereof, and must not be present at any deliberation or decision of the Board relating to the contract.

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(2) Where, at a meeting of the Board, any of the following matters arise, namely—

- (a) an arrangement to which the Authority is a party or such proposed arrangement; or
- (b) a contract or other agreement with the Authority or such proposed contract or agreement, then a member of the Board present at the meeting who has an interest in such matters—

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- 1. must at the meeting disclose to the Board the fact of such interest and the nature thereof;
- 2. must take no part in any deliberations of the Board relating to such matter save to such extent as the chairperson of the meeting at which such deliberations take place may permit; and
- 3. must not vote on a decision relating to the matter.

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(3) Where an interest is disclosed under this section, the disclosure must be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made must not be counted in the quorum for the meeting.

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(4) Where, at the meeting of the Board, a question arises as to whether or not a course of conduct, if pursued by a member of the Board, would be a failure by him or her to comply with the requirements of subsection (1) or (2), the question may be determined by the chairperson of the meeting whose decision is final and where such a question is so determined particulars of the determination must be recorded in the minutes of the meeting.

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(5) For the purposes of this section, a member has a conflict of interest if—

- (a) the member, or a family member, partner or business associate of the member, or has a financial or other interest in a business that is involved with any contract or project of the Authority;
- (b) the member has any other interest that may preclude, or may reasonably be perceived as precluding, the member from performing the functions of a member of the Board in a fair, unbiased and proper manner.

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Prohibition on unauthorised disclosure of confidential information

23. (1) In this section “**confidential information**” includes information that is expressed by the Authority to be confidential either as regards particular information or as regards information of a particular class or description.

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(2) Save as otherwise provided by law, a person must not, without the consent of the Authority, disclose confidential information obtained by him or her while performing duties as a member of the Board, or when otherwise engaged by the Authority, unless he or she is duly authorised by the Authority to do so.

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(3) Nothing in subsection (2) prevents the disclosure of information in a report made

to the Authority or by or on behalf of the Authority to the responsible Member.

Prohibition on certain communications

24. (1) A person who communicates with a member of the Board, or with any other person engaged by the Authority, for the purpose of influencing improperly his or her consideration of any matter which falls to be considered by the Authority commits an offence. 5

(2) If a person to whom a communication is made becomes of the opinion that a communication is in contravention of subsection (1), it is his or her duty not to entertain the communication further and he or she must inform forthwith the chairperson of the Board in writing of the substance of such communication and the chairperson must acknowledge in writing the receipt of such information. 10

Board charter

25. (1) The Board must, not later than 60 days after its appointment, formulate a charter for the Board which must at least, subject to this Act—

(a) outline the roles and responsibilities of the Board, its committees and individual members; 15

(a) outline the purpose and vision of the Board in terms of this Act;

(b) confirm the Board's responsibility to—

(i) adopt the strategic objectives and plans as defined in the strategic plan;

(ii) monitor operational performance and management; 20

(iii) develop policy on risk management and internal controls; and

(iv) determine responsibility for marketing and communication strategies;

(c) contain a code of conduct for Board members and staff members;

(d) identify functions intended to be delegated to the chief executive officer, management and staff of the Authority; 25

(e) provide a framework for appointing senior staff members for the Authority; and

(f) deal with any other matters that may be prescribed.

(2) The Charter must be submitted to the responsible Member before it is finalised in order to allow the responsible Member to comment on its contents. 30

(3) The Board must, prior to submitting the Charter to the responsible Member, first submit it to the relevant Municipalities for their consideration and comments.

(4) The Board must, when submitting the Charter to the responsible Member, provide the responsible Member with the comments from the relevant Municipalities and the Board's assessment and views regarding the comments made by the relevant Municipalities. 35

(5) The Board must summarise the Charter in the annual report and review it at least every two years.

Part II

Supervision of Authority Policy directions

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26. (1) The responsible Member, after consultation with relevant Municipalities, may give policy direction in writing to the Authority regarding the performance of any of its functions and the exercise of any of its powers under this Act.

(2) The Authority must comply with any such direction in the performance of its functions and the exercise of its powers. 45

(3) Where the responsible Member gives a direction under this section, a notice of the giving of the direction and the details of it must

(a) as soon as possible, after it is given, be submitted to the Premier's Coordinating Forum; and

(b) be published in the Provincial Gazette within 30 days of it being given by the responsible Member. 50

Guidelines

27. (1) The responsible Member may issue guidelines in writing to the Authority regarding the performance of any of its functions and the exercise of any of its powers under this Act. 55

(2) The Authority must have regard to such guidelines in the performance of its functions and the exercise of its powers.

Accountability of Board

28. (1) The Board is accountable to the responsible Member for the performance of any of its functions and the exercise of any of its powers under this Act. 5

(2) The Board must, on receipt of a request from the responsible Member, provide him or her with—

- (a) advice, including advice in relation to transport outside the functional area of the Authority; or
- (b) any other information as the responsible Member may require in connection with any other matter relating to the Authority. 10

Performance management

29. (1) The Authority must appoint an independent body that will be responsible for the bi-annual evaluation of the performance of the chairperson and the other members of the Board. 15

(2) The Authority must submit the evaluation reports to the responsible Member without delay.

(3) The responsible Member must submit a bi-annual report on the performance of the Authority to the Executive Council for consideration.

Remuneration

30. Subject to the provisions of section 10(5), the chairperson and other members of the Board contemplated in section 10(2) must be paid such remuneration, allowances or such benefits as the Executive Council may determine, based on the recommendations of the responsible Member with the concurrence of the Member of the Executive Council responsible for finance in the Province. 25

CHAPTER 5

MANAGEMENT AND STAFF OF AUTHORITY

Part I

Chief Executive Officer

Appointment of chief executive officer

31. (1) The Executive Council, after consultation with the Board and the responsible Member, must appoint a suitably qualified and experienced person as a chief executive officer of the Authority.

(2) The chief executive officer—

- (a) must be— 35
 - (i) a citizen or permanent resident of the Republic; and
 - (ii) a fit and proper person who possesses relevant knowledge and expertise and a minimum experience of 10 years; and
- (b) holds office—
 - (i) for a period not exceeding five years, which is renewable at the discretion of the Executive Council; and 40
 - (ii) on such terms and condition as the Executive Council, based on the recommendations of the responsible Member after consultation with the Board, may determine.

(3) The chief executive officer may not engage in any other employment outside the functions of the office without prior approval of the responsible Member. 45

(4) The chief executive officer may resign by giving written notice to the responsible Member, as prescribed in his or her contract of employment.

(5) On ceasing to hold office for any reason, the chief executive officer ceases to be a member of the Board or any other body on which he or she represented the Authority. 50

Employment contract and performance agreement of chief executive officer

32. (1) The responsible Member and the chief executive officer must conclude a written contract of employment for the chief executive officer within three months of his or her appointment.

(2) The responsible Member and the chief executive officer must conclude a performance agreement for the chief executive officer— 5

(a) within a reasonable time after the appointment of the chief executive officer; and

(b) thereafter, annually within one month of the commencement of a financial year. 10

(3) The performance agreement must include—

(a) measurable performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met;

(b) standards and procedures for evaluating performance and intervals for evaluation; and 15

(c) the consequences of substandard performance or non-performance.

Disqualification from holding office of chief executive officer and termination of office

33. (1) A person may not be appointed or continue as chief executive officer if that person does not comply with the requirements of section 31 or suffers from one of the disqualifications as a member in terms of section 12. 20

(2) The chief executive officer must vacate office if he or she becomes disqualified in terms of subsection (1).

(3) The responsible Member, after giving the chief executive officer an opportunity to be heard and after consulting the Board, may with the consent of the Executive Council terminate the appointment of the chief executive officer if, in the opinion of the responsible Member, sufficient reasons exist to do so. 25

Duties and responsibilities of chief executive officer

34. (1) The chief executive officer is responsible for the implementation of decision of the Board and the day-to-day running of the Authority and must perform the following functions— 30

(a) annually prepare the draft business plan of the Authority for the ensuing financial year and submit the plan to the Board for approval;

(b) submit within three months of his appointment the Authority's draft organisational structure, inclusive of key performance indicators for each department, division or section, to the Board for approval; and 35

(c) recommend to the Board for approval a scheme containing the proposed remuneration of the Authority's personnel after seeking the concurrence of the Provincial Treasury and their terms and conditions of service based on the approved business plan; 40

(d) recruit and appoint the personnel needed in accordance with the terms of the scheme submitted and approved by the Board; and

(e) attend meetings of the Board and keep the Board informed on a regular basis of the Authority's performance. 45

(2) In designing the organisational structure of the Authority, the chief executive officer must, subject to the approval of the responsible Member, ensure that the Authority is structured into departments, divisions or sections to comprehensively cover all its functions. 50

(3) The organisational structure must ensure that the Authority employs staff who have acquired experience in areas such as transport planning, engineering, transport safety and environmental regulation, information technology, tariff and competition regulations, law and finance.

Chief executive officer's disclosure of interest and conflict of interests

35. (1) The chief executive officer must disclose to the Board any direct or indirect interest, including a potential interest, which he or she or an immediate family member, business partner, associate or previous employer has in any business that may benefit from the Authority or any of its projects. 55

(2) The chief executive officer must refer to the Board any matter in respect of which the chief executive officer is required to make a decision or take action and where a conflict of interest or potential conflict of interest as contemplated in subsection (1) exists or is foreseeable.

(3) The Board must determine the appropriate decision or action in respect of any matter referred to it in terms of subsection (2), and must inform the chief executive officer of its determination in writing.

(4) The chief executive officer must comply with the determination of the Board, contemplated in subsection (3).

(5) A failure by the chief executive officer, to disclose any interest contemplated in subsection (1) or any contravention of subsection (2) or (4), constitutes a sufficient reason to terminate the chief executive officer's employment in terms of section 33(3).

Part II

Secretary to Board

Appointment and responsibilities of Secretary of Board

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36. (1) The chief executive officer must, with the concurrence of the Board, appoint a person who possesses a legal qualification and with no less than 10 years post-qualification experience as the Secretary to the Board.

(2) The Secretary to the Board referred to in subsection (1) is responsible for—

- (a) the administration of the secretariat department, division or section of the Authority;
- (b) keeping the books and proper records of the proceedings of the Board;
- (c) conveying decisions of the Board to its members or affected parties or persons; and
- (d) generally performing all other duties effecting the Authority as may be specifically assigned to him or her by the Board or the chief executive officer.

Part III

Other Personnel

Staff of Authority

37. (1) The chief executive officer must, in accordance with the approved organisational structure of the Authority—

- (a) appoint such number of persons with appropriate expertise to assist the Authority in the execution of its functions; and
- (b) arrange with the national or provincial government or any other body for the services of—
 - (i) employees of the national or provincial government or the other body to be seconded to the Authority; or
 - (ii) employees of the Authority to be seconded to national or provincial government.

(2) Persons seconded to the Authority perform their duties subject to the control and direction of the chief executive officer.

(3) The chief executive officer, in consultation with the Board and after seeking the concurrence of the Provincial Treasury, must determine the remuneration, allowances, benefits, and other terms and conditions of appointment of members of staff in accordance with a scheme contemplated in section 34(1)(c).

(4) The Authority may contract the services of persons, other than employees, to perform any specific act or function.

CHAPTER 6

FINANCES AND ACCOUNTABILITY

Assets of Authority

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38. (1) The Authority is funded primarily by money appropriated from the Provincial Revenue Fund.

(2) The Member of the Executive Council responsible for finance in the Province may, out of money appropriated by the Provincial Legislature, grant money to the Authority on terms and conditions which that Member may determine in writing.

(3) The assets of the Authority include—

- (a) assets transferred to it by or under this Act; 5
- (b) the money appropriated by the Provincial Legislature for the purpose of funding the Authority;
- (c) amounts payable to it under any law or instrument thereunder;
- (d) reserves resulting from the operations of the Authority;
- (e) assets acquired or proceeds realised by it in the course of its operations; 10
- (f) money received by grant or donation from local or foreign aid agencies;
- (g) interests on investments; and
- (h) money from any source approved by the responsible Member.

Transfer of provincial assets and liabilities to Authority

39. (1) Subject to the Public Finance Management Act, 1999, the responsible Member 15 may transfer assets of the Province to the Authority to enable it to fulfil its functions.

(2) Where immediately before a transfer under subsection (1)—

- (a) the Province had a right arising from a debt, liability or obligation of another person in respect of the asset transferred; or
- (b) the Province had a debt, liability or obligation that existed in respect of an 20 asset so transferred,

the right, debt, liability or obligation is transferred from the Province to the Authority on the date of such transfer, if the responsible Member stipulates in writing that it is to be so transferred.

(3) Where immovable property or a real right therein owned by the Province is 25 transferred to the Authority, the responsible Member must describe the property by notice in the Provincial *Gazette*, which will be transferred to the Authority on the date specified in the notice, which may not be earlier than the date of publication of the notice.

Bank accounts

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40. The Authority must open and maintain an account with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), in which must be deposited all money received by the Authority and from which payments for the Authority or on its behalf must be made.

Financial year

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41. The financial year of the Authority is the period commencing from 1 April each year and ending 31 March of the following year, both days included.

Strategic plan

42. (1) The Authority must prepare and submit to the responsible Member a strategic plan for its administration, covering the following financial year and the two financial 40 years thereafter, or any other period prescribed under the Public Finance Management Act, 1999.

(2) The strategic plan must comply with any requirements prescribed under the Public Finance Management Act, 1999 and must include—

- (a) the objectives and outcomes of the Authority in terms of this Act and the strategic plan; 45
- (b) the policies, strategies and measures that will be used to achieve the objectives and desired outcomes of the Authority;
- (c) targets, performance measures and indicators for monitoring and evaluating the Authority's performance in delivering the desired outcomes and objec- 50 tives;
- (d) a financial plan that describes the financial objectives and targets of the Authority;
- (e) the overall financial strategies for the Authority and a forecast of its revenue and expenditure, including capital expenditure; 55

- (f) financial performance indicators and a financial monitoring, evaluation and audit strategy;
- (g) a risk management plan and a fraud prevention plan;
- (h) strategies for economic development and broad-based black economic empowerment; and
- (i) human resources plan.

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(3) Unless otherwise agreed with the responsible Member, the strategic plan must be submitted to the responsible Member not later than six months before the start of each financial year.

(4) The Board must, prior to submitting the strategic plan to the responsible Member, first submit it to the relevant Municipalities for their consideration and comments.

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(5) The Board must consider any comments, proposals or suggestions made by the responsible Member, and must implement any changes or additions requested by the responsible Member.

(6) Despite subsection (3), the strategic plan for the Authority's first financial year must be submitted to the responsible Member not later than 60 days after the date on which the Authority becomes operative.

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Budget

43. The Authority must comply with the Public Finance Management Act, 1999, and the Treasury Regulations in relation to the budget.

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Monthly and quarterly reports

44. (1) The Authority must comply with the Public Finance Management Act, 1999, and the Treasury Regulations with regard to the monthly and other reporting requirements.

(2) In addition, the Authority must prepare a quarterly report not later than 30 days after the end of each quarter—

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- (a) detailing the Authority's actual revenue and expenditure for that quarter;
- (b) including a projection of expected revenue and expenditure for the remainder of the financial year;
- (c) including a reconciliation of actual revenue and expenditure with the projected finances of the Authority from the previous report;
- (d) if applicable, explaining in detail any variances and the measures taken to ensure that expenditure remains within budget; and
- (e) outlining other relevant matters, including a report on the performance of the Authority in achieving the objectives of this Act.

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(3) The Board must submit the quarterly report to the responsible Member not later than 30 days after the end of the quarter in question.

(4) The Board must, when submitting the quarterly report to the responsible Member, also share it with the relevant Municipalities for their information.

Annual report

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45. (1) The Authority must, for each financial year, prepare an annual report that—

- (a) articulates the vision and objectives of the Authority;
- (b) reports on the business of the Authority for that year and its performance against predetermined targets;
- (c) contains a summary report of the financial activities of the Authority, audited financial statements, the external auditor's report and a report of the audit committee detailing internal controls and evaluating the financial statements;
- (d) describes the structure and nature of the Board, with details of the members and meetings of the Board and committees;
- (e) includes an evaluation of the Board;
- (f) describes key achievements in the harmonisation and integration of public transport and contributions towards the objects of this Act; and
- (g) indicates the manner and extent to which any other aspect of the strategic plan has been implemented.

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(2) Within five months of the end of the financial year, the Authority must submit the annual report, as approved by the Board, to the responsible Member and the responsible Member must cause the annual report to be tabled in the Provincial Legislature.

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(3) The Board must, when submitting the annual report to the responsible Member, also share it with the relevant Municipalities for their information.

Accounting and financial statements

46. (1) The Authority must keep such accounting and related records as are necessary and required to comply with the Public Finance Management Act, 1999, and Treasury Regulations. 5

(2) The Authority must draw up financial statements in respect of each financial year in a form compliant with the Public Finance Management Act, 1999, Treasury Regulations and the requirements of the Board.

(3) The financial statements of the Authority must be audited annually by the Auditor-General, and must be submitted to the Provincial Treasury and Auditor-General within five months of the financial year end. 10

(4) The Provincial Treasury may direct that the audited financial statements of the Authority be incorporated in the financial statements of the Department.

Auditing

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47. The Audit Committee contemplated in the Public Finance Management Act, 1999, must implement financial and risk management systems and internal controls within the Authority.

CHAPTER 7

GENERAL AND MISCELLANEOUS PROVISIONS

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Liquidation and judicial management

48. Despite any other law, the Authority may not be placed under judicial management or liquidation except if authorised by an Act of the Provincial Legislature adopted specifically for that purpose.

Regulations

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49. The responsible Member may make regulations—

(a) prescribing the form and manner in which a strategic transport plan must be prepared in terms of sections 7 (7);

(b) prescribing the form and manner in which an integrated implementation plan must be prepared in terms of sections 8(3); or

(c) for any purpose in relation to which regulations are provided for in this Act. 30

Delegations

50. (1) The Board may delegate the execution of any of its duties or responsibilities to the chairperson, any committee of the Board or chief executive officer, except the power to make rules or appoint committees or committee members of the Board. 35

(2) The chief executive officer may delegate the execution of any of his or her duties or responsibilities to—

(a) any other person with appropriate knowledge and experience who is under the control of the chief executive officer; or

(b) any other person, after consultation with the Board. 40

(3) A delegation under subsection (1) or (2) must be in writing and

(a) may be subject to any conditions or restrictions determined by the Board or the chief executive officer;

(b) does not prevent the exercise of that duty or responsibility by the Board or the chief executive officer; and

(c) may be withdrawn or amended by the Board or the chief executive officer. 45

Code of conduct

51. (1) The Board must develop and adopt, and may amend, a code of conduct that is based on best practices so as to ensure good corporate governance in the carrying out of the duties and responsibilities by the members and the employees of the Authority. 50

(2) The code of conduct referred to in subsection (1) must be submitted to the responsible Member for approval.

(3) The chief executive officer must ensure that the contents of the code of conduct are widely publicised within the Authority and form part of any agreement or contract between the Authority and its members or employees.

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Application for exemption from taxes

52. (1) The responsible Member may, on advice of the Board and if the need arises, apply to the relevant authority under any applicable law for exemption of the Authority from the payment of any taxes, levies, duties, or surcharges imposed or levied under the applicable law.

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(2) The exemption referred to in subsection (1) shall not apply to the members or employees of the Authority.

Limitation of Liability

53. (1) The Authority, its officials and employees or agents, and any other person acting on their behalf, is not liable for any loss or damage suffered by any person as a result of the exercise of any power or the performance of any function in good faith in terms of this Act, or the failure to exercise any such power or to perform any such function.

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(2) The limitation of liability in terms of this section does not include any fraudulent or unlawful acts, prohibited by any law.

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Transitional Provision

54. (1) Any Provincial integrated ticketing system established or in design at the time of commencement of this Act, and any contract entered into or property in relation to such a system are transferred to the Authority.

(2) The responsible Member must recommend to the Executive Council the appointment of an interim chief executive officer until the first chief executive officer of the Authority is appointed as contemplated in section 31 of this Act.

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Short title and commencement

55. This Act is called the Gauteng Transport Authority Act, 2019, and comes into operation on a date determined by the Premier by proclamation in the Provincial Gazette.

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